

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSEPH D. OLVERA, et al.,

Plaintiffs,

v.

R. TUCKER, et al.,

Defendants.

NO: 12-CV-3015-TOR

ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANTS TUCKER AND
STEADMAN

BEFORE THE COURT is a motion for summary judgment filed by Defendants R. Tucker and Matthew Steadman (ECF No. 111). This matter was heard without oral argument on February 19, 2013. The Court has reviewed the briefing and the record and files herein, and is fully informed.

BACKGROUND

This is an excessive force lawsuit arising from injuries allegedly sustained by *pro se* Plaintiff Joseph Olvera during an in-home arrest. Mr. Olvera alleges that his wrists were injured during the arrest as a result of being restrained in handcuffs that were either too small or applied too tightly. Mr. Olvera's family members, *pro*

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS
TUCKER AND STEADMAN ~ 1

1 se Plaintiffs Maria L. Olvera, Maria G. Olvera, Tina Olvera and Esperanza Lopez,
2 have also asserted state-law causes of action arising from Mr. Olvera's arrest.

3 The Court previously dismissed all claims against Defendants Michael Hisey
4 and Eric Horbatko on statute of limitations grounds. *See* ECF Nos. 36, 66, and 82.
5 Defendants R. Tucker and Matthew Steadman now move for summary dismissal of
6 the claims against them on identical grounds.

7 PROCEDURAL HISTORY

8 Plaintiffs originally filed this lawsuit in Yakima County Superior Court on
9 April 13, 2011. The summons and complaint filed on that date were never served
10 upon any of the Defendants. On January 17, 2012, Plaintiffs filed an amended
11 complaint in Yakima County Superior Court. Defendants subsequently removed
12 the case to this Court on February 12, 2012.

13 Defendant Hisey moved for summary judgment on April 20, 2012. ECF No.
14 6. The Court granted the motion in part on June 7, 2012, dismissing the claims of
15 Plaintiffs Joseph Olvera, Maria L. Olvera, Maria G. Olvera, and Tina Olvera on
16 statute of limitations grounds. ECF No. 36. The Court denied the motion with
17 leave to renew as to Plaintiff Esperanza Lopez pending further development of the
18 factual record. ECF No. 36 at 5. Plaintiff Joseph Olvera filed a motion to
19 reconsider on June 11, 2012 (ECF No. 37), which the Court denied on August 15,
20 2012. ECF No. 66.

1 Defendant Horbatko filed a motion for summary judgment on June 30, 2012.
2 ECF No. 45. Defendant Hisey renewed his motion for summary judgment as to
3 the claims of Plaintiff Esperanza Lopez on August 14, 2012. ECF No. 56. The
4 Court granted both motions in an order dated October 3, 2012, finding that the
5 statute of limitations on Plaintiffs' claims (including those of Plaintiff Esperanza
6 Lopez) had expired. ECF No. 82.

7 Defendants Tucker and Steadman filed the instant motion for summary
8 judgment on December 28, 2012. ECF No. 111. Like their co-defendants,
9 Defendants Tucker and Steadman seek summary dismissal of Plaintiffs' claims on
10 statute of limitations grounds.

11 FACTS

12 The facts giving rise to this lawsuit are set forth in detail in the Court's prior
13 orders granting summary judgment in favor of Defendants Hisey and Horbatko.
14 *See* ECF Nos. 36 and 82. Briefly, Plaintiff Joseph Olvera was arrested in his home
15 on October 23, 2007, pursuant to an arrest warrant for possession of a controlled
16 substance with intent to distribute. The arrest was witnessed by Mr. Olvera's
17 family members, Plaintiffs Maria L. Olvera, Maria G. Olvera, Tina Olvera and
18 Esperanza Lopez. Maria L. Olvera was also arrested and taken into custody for
19 drug-related offenses on the same day.

1 suit under the governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
2 248-49 (1986). A dispute over any such fact is “genuine” where there is sufficient
3 evidence from which a reasonable jury could find in favor of the non-moving
4 party. *Id.* at 248. In ruling on a summary judgment motion, a court must construe
5 the facts, as well as all rational inferences therefrom, in the light most favorable to
6 the non-moving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

7 The statute of limitations on Plaintiff Joseph Olvera’s claim under 42 U.S.C.
8 § 1983 is three years. *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th
9 Cir. 2002). This same limitations period applies to each of the Plaintiffs’ state-law
10 claims. RCW 4.16.080(2). The events giving rise to Plaintiffs’ claims occurred on
11 October 23, 2007. Thus, under Washington law, Plaintiffs were required to file the
12 instant lawsuit on or before October 23, 2010. However, Plaintiffs did not file
13 their initial complaint in Yakima County Superior Court until April 13, 2011.
14 Accordingly, the only relevant question is whether the statute of limitations on
15 Plaintiffs’ claims was tolled long enough to render the filing of their claims timely.

16 The analysis of the state law claims asserted by Plaintiffs Maria L. Olvera,
17 Maria G. Olvera, Tina Olvera and Esperanza Lopez is straightforward. The statute
18 of limitations on these claims was tolled for sixty (60) days beginning on October
19 11, 2010, when Plaintiffs filed a tort claim form with Yakima County (*see* ECF
20 No. 111-2 at 12). RCW 4.96.020(f)(4). Plaintiff Maria L. Olvera’s claims were

1 also tolled for a period of three (3) days while she was jailed following her arrest
2 on October 23, 2007. RCW 4.16.190(1). Accounting for these tolling periods, the
3 claims of Plaintiffs Maria G. Olvera, Tina Olvera and Esperanza Lopez expired on
4 December 22, 2010. Plaintiff Maria L. Olvera's claims expired on December 25,
5 2010. Because Plaintiffs did not file their initial complaint until April 13, 2011,
6 these claims must be dismissed as untimely filed.

7 Plaintiff Joseph Olvera's § 1983 claim is equally straightforward. The
8 statute of limitations on this claim was tolled from October 23, 2007 to March 27,
9 2008 (a period of 156 days) while Mr. Olvera was imprisoned prior to sentencing.
10 RCW 4.16.190(1). Accounting for this 156-day tolling period, Mr. Olvera's
11 § 1983 claim expired on March 27, 2011. Given that Mr. Olvera did not file this
12 claim until April 13, 2011, the claim must be dismissed as untimely.

13 The analysis of Mr. Olvera's state law claims is somewhat more complex.
14 As with Mr. Olvera's § 1983 claim, the statute of limitations on these claims was
15 tolled for a period of 156 days while Mr. Olvera was incarcerated prior to
16 sentencing. RCW 4.16.190(1). The limitations period was tolled for an additional
17 sixty (60) days beginning on October 11, 2010, when Plaintiffs filed a tort claim
18 form with Yakima County (*see* ECF No. 111-2 at 12). RCW 4.96.020(f)(4).
19 Accounting for these tolling periods, the statute of limitations on Mr. Olvera's state
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1 law claims expired on May 27, 2011. Accordingly, these claims were timely when
2 they were initially filed in Yakima County Superior Court on April 13, 2011.

3 However, as the Court explained in its June 3, 2012 summary judgment
4 order, Plaintiffs failed to serve their initial complaint on at least one Defendant
5 within ninety (90) days of filing. As a result, the action was “deemed to not have
6 been commenced,” under Washington law. RCW 4.16.170; *see also O’Neill v.*
7 *Farmers Ins. Co. of Wash.*, 124 Wash. App. 516, 523 (2004) (“Washington courts
8 have repeatedly held that the filing of a complaint does not constitute the
9 commencement of an action for purposes of tolling the statute of limitations. It is
10 still necessary for the plaintiff to serve a defendant within ninety days of the date
11 of filing in order for the commencement to be complete.”). Consequently, the
12 limitations period was not tolled by the filing of the initial complaint, RCW
13 4.16.170, and the May 27, 2011 expiration date remained in effect. By the time
14 that Plaintiffs filed their amended complaint on January 17, 2012, the statute of
15 limitations had already expired. Accordingly, Mr. Olvera’s state law claims
16 against Defendants Tucker and Steadman must be dismissed as untimely filed.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 The motion for summary judgment filed by Defendants R. Tucker and
3 Matthew Steadman (ECF No. 111) is **GRANTED**.

4 The District Court Executive is hereby directed to enter this Order, provide
5 copies to counsel and Plaintiffs at their addresses of record, enter judgment in
6 favor of Defendants Tucker and Steadman, and **CLOSE** the file.

7 **DATED** this 20th day of February, 2013.



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A handwritten signature in blue ink that reads "Thomas O. Rice".
THOMAS O. RICE
United States District Judge